APPEAL NO. 020236
FILED FEBRUARY 28, 2002

Following a contested case hearing held on December 11, 2001, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer resolved the sole disputed issue by determining that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the first quarter (July 10 through October 8, 2001). The claimant has appealed, asserting that the hearing officer erred in failing to grant a continuance and in failing to include certain of the claimant's evidence in the findings of fact, and that the hearing officer's resolution of the issue is against the great weight of the evidence. The respondent (carrier) urges that the evidence is sufficient to support the challenged determination and that the hearing officer did not err in the particulars asserted by the claimant.

DECISION

Affirmed.

The hearing officer did not err in concluding that the claimant is not entitled to SIBs for the first quarter. Among other things, the claimant, who had the burden of proof, was required to show that during the qualifying period for the first quarter (March 28 through June 26, 2001) he made a good faith attempt to obtain employment commensurate with his ability to work. Section 408.142(a)(4) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(b)(2) (Rule 130.102)(b)(2)). The claimant, who apparently sustained a low back injury and whose right femur was fractured in an accident at work on _____, conceded that, during the qualifying period, he made no effort to obtain employment and insisted that he had no ability to work at any type of employment. With regard to a contention of no ability to work and the statutory good faith attempt requirement, Rule 130.102(d)(4) provides that an employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and "no other record shows that the injured employee is able to return to work[.]" The hearing officer found that during the qualifying period the claimant had some ability to work and that "[t]here were other records, including medical reports, that showed Claimant was able to return to work." Although the hearing officer did not identify those reports in his findings, he did so in his discussion of the evidence, specifying the July 7, 1999, and October 6, 1999, reports of Dr. WB, who treated the claimant at one point, and the October 17, 2001, report of Dr. BB, a required medical examination doctor. The hearing officer sets out the essence of these reports and they clearly reflect that the claimant was able to return to some work, albeit with restrictions. The hearing officer in discussing Dr. BB's report states that Dr. BB "opined Claimant had the ability to perform limited duty work with specific restrictions." We note that while Dr. BB's October 17, 2001, report does not explicitly state such opinion, it is the clear and virtually ineluctable inference from the restrictions Dr. BB does specify in considerable detail. We are satisfied that the hearing officer's factual

findings are sufficiently supported by the evidence and adequately support the conclusion of law. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

As for the claimant's other assigned errors, we find no abuse of discretion in the hearing officer's denying the request for a continuance. Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986). The claimant's request, which was made after the evidence was closed and just before summations, sought a delay in the issuance of the hearing officer's decision to permit the claimant to contact the Texas Rehabilitation Commission (TRC) and avail himself of the opportunity for various examinations by that agency. There was evidence that the claimant had been previously referred to but had not contacted the TRC. As for the findings of fact, we are satisfied that they are sufficient to support the conclusions of law. The 1989 Act does not state how detailed a hearing officer's findings of fact must be. Section 410.168(a). However, the Appeals Panel has had occasion to observe that findings of fact should not consist of mere recitations of evidence. *See* concurring opinion in Texas Workers' Compensation Commission Appeal No. 001876, decided September 22, 2000.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **TRANSCONTINENTAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

CT CORPORATION SYSTEM
350 NORTH ST. PAUL
DALLAS, TEXAS 75201.

Philip F. O'Neill
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Robert W. Potts
Appeals Judge